Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

To: The Commission

COMMENTS OF ELLIS COMMUNICATIONS, INC.

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Ellis Communications, Inc. ("Elcom") submits these comments in response to the Further Notice of Proposed Rulemaking in the above-referenced proceedings. Elcom currently owns fourteen operating television and satellite television broadcast stations — principally in small and medium-sized television markets (see Attachment) — two radio stations, a sports program production company, and a multimedia software company.

I. SUMMARY OF ARGUMENT

These comments supplement those filed by the Local Station Ownership Coalition, of which Elcom is a member, with respect to elimination or substantial relaxation of the Commission's duopoly rule, which prohibits any entity from owning or controlling more than one television broadcast station in any market. In addition, Elcom wholeheartedly endorses the Commission's proposal to eliminate the numerical limit on television station ownership nationally, since the limit is outmoded and unnecessary and undermines the vitality of commercial television broadcasters. Finally, these separate comments also discuss the important role played by local marketing agreements in enabling local broadcasters to serve their communities.

As the Local Station Ownership Coalition demonstrates in its comments, the local video marketplace is, today, characterized by an abundance of video channels. Nonetheless, commercial broadcasters are constrained from competing vigorously in this market by the duopoly rule and other multiple ownership rules, which were promulgated in order to prevent undue concentration of video programming outlets in an era when such outlets were scarce. This handicap is becoming increasingly problematic as the economics of the video distribution market are changing.

For instance, cable operators have been creating market-wide advertising interconnects capable of offering local spots on all, or nearly all, of the cable systems in the market served by the interconnected systems. Confronted by these, and other, potent competitors, commercial broadcasters are limited in their ability to take advantage of similar economies of scale through the acquisition of more stations generally and the combination of local stations. Specifically, as a result of the duopoly rule, many local broadcasters, particularly in small markets, have become marginal operations. Thus, the duopoly rule today actually threatens to reduce the number and diversity of voices in the video distribution marketplace and is operating at cross-purposes to its original justification.

II. MARKETPLACE REALITIES

As the Commission considers the proposals in the above-referenced proceedings, it must not lose sight of the competitive realities in the video distribution marketplace. First, there is far more competition at the local level among broadcasters than ever before. In 1970, there were 677 commercial television broadcast stations nationwide. That number increased to 883 by 1985, and to approximately 1,160 today.[1] Most of this growth has occurred in the smaller and medium-sized markets.

Second, broadcasters in the Elcom markets are facing increasing competition from video distribution outlets that were unknown when the Commission's

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[1] Cf. Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, MM Docket No. 91-221 (rel. Jan. 17, 1995) at ¶ 25. The number of public broadcast stations, which compete with commercial broadcasters for viewership if not advertising dollars, has also increased dramatically within the last decade.

duopoly, one-to-a-market, and other ownership limitations were enacted. We compete with cable television systems that serve, an average in the Elcom markets of about 60% of homes. Moreover, as the Commission has recognized, we are now facing competition from direct broadcast satellite ("DBS") providers, "wireless cable" systems ("MMDS" or "LMDS"), and emerging fiber-based video dialtone networks.[2]

The Commission, however, tentatively has concluded not to include these competitive video media among those that effectively substitute for commercial broadcasting because of their lack of market penetration. The Commission's assessment of the market penetration of these new services, however, is erroneous. Because of technological advances and pro-competitive Commission policies, these competitive services and technologies are making themselves felt now and will be strong competitors to broadcasters within a very few years.

Unlike commercial broadcasters, which depend upon advertising dollars as their sole source of income, these video programming services receive subscription fees in addition to advertising revenues. Moreover, because many of these competing technologies offer, or will soon offer, interactive services not available over broadcast airwaves, broadcasters wishing to compete with them for viewers, and therefore for advertising dollars, are at a distinct disadvantage.

As a result of this increase in competition from other stations, emerging technologies, and other media, many broadcast television stations, particularly in smaller markets, are now marginal operations.[3] Rather than waiting until these competing services have a commanding edge over commercial broadcasters, the Commission should treat these services as being present now in the relevant market for television broadcasting and should up-date its broadcast rules to enable broadcasters to compete effectively now.

The loss of a local broadcast station can have a significant negative impact on a small community. Unlike any other video programming service, local television broadcasters provide communities with locally relevant programming. This programming allows viewers to be informed about local activities and issues of local

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2 Id. at ¶ 12.

3 In 1991, smaller market stations lost an average $880,000 each. See Review of the Commission's Regulations Governing Television Broadcasting, 1995 WL 94465 (rel. Mar. 7, 1995) (citing comments).

public concern, and promotes the development of an educated citizenry.[4] In addition, the services that local broadcasters provide in an emergency or after a natural disaster are beyond measure.

For instance, in February of 1994, a major ice storm struck Memphis and its environs. The storm knocked out power for days on end, and created widespread disruptions of telephone service. Elcom's WMC-AM/FM/TV used a back up generator to remain on the air non-stop and provide vital information. Through its broadcasts, WMC served as a link between area residents and local utilities, the police department, the fire department, and the mayor's citizen service center in City Hall. Similarly, after the recent bombing in Oklahoma City, local television stations were on the air around the clock to provide community support services and to help reunite families separated by the disaster.[5]

Unfortunately, the future ability of commercial broadcast stations to provide this kind of distinctly local service is threatened by the Commission's broadcast ownership rules. In the increasingly competitive market for video programming, commercial broadcasters find themselves burdened by fifty-year-old regulatory policies and restrictions. Many of these restrictions, including the duopoly rule, may have been necessary to promote diversity when there were few video programming outlets available to consumers. But in a world in which advertisers and viewers have a "plethora of video media"[6] from which to chose, these restrictions remain simply as anachronisms.

Indeed, recent developments in the cable industry make the elimination of unnecessary restrictions on broadcasters an imperative for the long-term survival of a vibrant and healthy broadcast industry. Despite the ever increasing penetration of cable television, the share of local advertising revenues garnered by these systems

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4 See, e.g., Competition, Rate Regulation and the Commission's Policies Relating to the provision of Cable Television Service, 5 FCC Rcd 4962 (1990) (local television provides citizens with information regarding local political issues and events).
5 See Lianne Hart & Bob Pool, Los Angeles Times at 1 (Apr. 20, 1995) (e.g., local television stations broadcast description of an injured toddler in an effort to contact her parents).
6 Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, MM Docket No. 91-221 (rel. Jan. 17, 1995) at ¶ 67.

lagged behind that of most full power commercial broadcast stations throughout the 1980s. This lag was due primarily to the fragmentation of ownership of cable systems in local markets. Advertisers who wanted to reach an entire community (*e.g.*, the Memphis metropolitan area) found it necessary to buy advertising time on several different cable systems.

Two separate phenomena have changed this pattern. First, cable operators are increasingly creating market-wide advertising interconnects that link their systems either physically ("hard interconnects") or contractually ("soft interconnects") for the purpose of selling local advertising spots. Once interconnected, these cable operators are capable of providing one stop shopping for advertisers looking to buy time on all of the interconnected systems, which usually includes all, or nearly all, of the cable systems the given market. For example, Scripps Howard is working on a major interconnect in the Knoxville area involving system capacity in excess of 50 channels.

Second, driven by the additional incentive to compete with the telephone companies and to provide seamless local telephone service, cable operators have been clustering at a rapid pace, buying or trading cable systems so that a single operator may dominate a local market. For instance, in Memphis, Tennessee, where Elcom owns a station, Time Warner serves 60% of the homes that are wired for cable and 34% of total homes in the market. In Reno, Nevada, where Elcom runs a station, TCI serves 77% of the homes that are wired for cable and 52% of all homes. Both TCI and Time Warner have been aggressively acquiring cable systems in order to create "super-clusters."[7]

Driven by interconnects and clustering, cable's share of local advertising revenues is rising rapidly. In 1993, cable advertising revenues were approximately $600 million, which represented an increase of 80% from 1990 figure. And, with the pressure of competition from telephone companies, satellites, and MMDS and LMDS, cable multiple system operators can be expected to accelerate both clustering and their efforts to target local advertising as a primary source of future revenue

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[7] See Mark Robichaux, TCI's Debt Faces Possible Downgrade By Moody's Following Buying Spree, Wall St. J. at B8 (Apr. 13, 1995) (listing recent TCI acquisitions); Eben Shapiro, Time Warner Agrees to Buy Cablevision, Wall St. J. at A3 (Feb. 8, 1995) (purchase of Cablevision is "second major cable-system acquisition by Time Warner in three weeks").

growth. Thus, all indications are that cable's share of advertising revenues will continue to grow at a comparable rate for the foreseeable future.

III. THE COMMISSION SHOULD ALLOW BROADCASTERS TO COMPETE ON EVEN TERMS WITH OTHER VIDEO PROGRAMMING PROVIDERS IN THE NEW VIDEO MARKETPLACE.

Although there have been monumental changes in the technology and economics of the video programming industry — changes that have outmoded the entire structure of broadcast ownership regulations — the most substantial changes lie immediately ahead. In order for broadcasters to continue their important role as providers of diverse and locally relevant programming, the Commission must remove or relax rules that render broadcasters too weak and cash strapped to produce their own quality local programming and obtain other attractive programming for their viewers.

First, and most importantly, the duopoly rule must be eliminated or substantially relaxed. Despite the fact that cable operators are free to consolidate their ownership of facilities in a local market and to program on numerous channels within their systems, the Commission's duopoly rule absolutely prohibits television broadcasters from owning more than one television channel in a market. The prohibition applies without regard to the competitive conditions in the local market and without regard to the level of consolidation among, and competition from, non-broadcast video competitors. This leaves broadcasters in the untenable position of being forced to compete against multichannel competitors with only one channel in each market. The Commission's proposal to change from a Grade B duopoly standard to a Grade A duopoly standard[8] is not adequate to redress this competitive imbalance. At a minimum, therefore, the Commission should permit duopoly ownership without regard to contour overlap where one of the two stations is a UHF station.

To respond to the challenges of today's media/advertising marketplace, a significant number of television broadcasters have entered into local marketing agreements ("LMAs"). LMAs generally involve the sale by a licensee of a block of

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[8] Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, MM Docket No. 91-221 (rel. Jan. 17, 1995) at ¶¶ 116-117.

time on its station to another station — in the same or an adjacent market — which then supplies the programming to fill that time and sells the advertising to support it. Such agreements enable separately owned stations to function cooperatively, achieving significant economies of scale through combined sales and advertising efforts, shared technical facilities, and joint programming arrangements.

LMAs have played an important role in preserving and expanding opportunities for local broadcasters to contribute to their communities. In many cases, LMAs have enabled financially distressed stations, usually UHF stations, to stay on the air. In other cases, LMAs have made it possible for would-be broadcasters to build new stations that otherwise would not have gone on the air. In virtually every instance, LMAs have resulted not only in increased competition in the local video market with greater options for viewers, advertisers, and programmers, but also in substantial improvements in the quality and quantity of local news and other local programming.

For example, Elcom's WEVU in Naples, Florida lacked the resources to operate a full-fledged news department. By entering into an LMA with WBBH in Fort Meyers, however, WEVU gained access to that station's news capabilities. The combined news staff for the two stations increased from 24 to 70, and two additional news bureaus were added. WEVU now provides news programming outside the traditional 6:00 p.m. and 11:00 p.m. periods, and offers the market's first local newscast at 4-5:00 p.m. In addition, WEVU gained access to WBBH's satellite news gathering equipment, which has enabled WEVU to provide extensive election coverage. WEVU was able to broadcast remotely from election headquarters and the homes of candidates, and sent news crews to cover the Governor's race and Senator Connie Mack's reelection bid. WEVU also relied on computer facilities to provide timely election information which became the basis for election stories during news breaks and for updates that were scrolled across the screen during regular programming.

Thus, the second step that the Commission should take to promote competition in the video programming marketplace is to permit the unfettered use of LMAs. Indeed, because LMAs are often sought or created in response to forces that are beyond the control of individual broadcasters, the Commission should permit the market to control the use of LMAs among television broadcasters.

Absent a liberalization of the duopoly rule along the lines discussed above, the Commission should not adopt its proposal to count a brokered station against the brokering licensee's national and local ownership limits in the case of LMAs involving more than 15 percent of a station's weekly broadcast hours.[9] The Commission's proposal is based on the rule the Commission adopted for radio time brokerage agreements, and the Commission's action in the radio context was premised on the fact that the Commission at the same time had adopted a "substantial relaxation of the local [radio] broadcast ownership rules."[10] This "substantial relaxation" included a change permitting radio duopoly ownership. Making same-market LMAs attributable without instituting a corresponding change in the television duopoly rule would be inconsistent with the approach taken by the Commission previously, and would deprive the public of the many benefits that LMAs have to offer. Accordingly, the Commission either should leave LMAs outside the ambit of its multiple ownership rules or should make LMAs attributable only in the context of permitting duopoly ownership.

By eliminating the duopoly rule and allowing the free use of LMAs, the Commission will allow commercial broadcasters to compete on more even terms with emerging video programming providers. In turn, this will ensure the continued availability of free, over-the-air programming for consumers.

IV. THE COMMISSION'S PROPOSAL TO ELIMINATE THE NUMERICAL STATION LIMIT SHOULD BE ADOPTED.

In the Further Notice of Proposed Rulemaking, the Commission has proposed eliminating the numerical station limit, which prohibits station owners from owning 12 broadcast television stations nationally.[11] Elcom enthusiastically supports this proposed change.

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[9] See Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, MM Docket No. 91-221 (rel. Jan. 17, 1995) at ¶ 138.

[10] Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2788 (1992).

[11] Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, MM Docket No. 91-221 (rel. Jan. 17, 1995) at ¶ 101. The limits are somewhat higher (14 stations and 30% audience reach) if two or more of the stations are controlled by minorities.

To begin with, the level of competition among television station owners is extremely high. As the Commission recognized in the NPRM, even if all television station owners consolidated so that each controlled 14 stations, the Herfindahl-Hirshman Index (HHI), would still be only 121, which is "very low by antitrust standards."[12] In addition, the increase in outlets for delivered video programming described above ensures that no single group of commonly owned stations can exercise market power in the video program production market or in the market for advertising.[13] Finally, there is no evidence that either of the national ownership limits have a positive impact on viewpoint diversity.[14] As a result, the Commission has tentatively concluded that "liberalization of the national ownership limits would not have an adverse impact upon competitiveness of the markets for delivered video programming, the market for advertising, or the video program production market....Nor [would] raising the national ownership limits have a serious adverse effect on diversity."[15]

In Elcom's experience, these conclusions are sound. The national ownership limits have had no significant impact on increasing viewpoint diversity or enhancing competition. Instead, the limits have prohibited station owners from consolidating their operations and achieving the kind of economies of scale that would help them to compete in the increasingly competitive market for delivered video programming. And to the extent that undue concentration of market power is perceived to be a problem, a single audience reach limitation provides a more meaningful check on market power concentration than does a numerical limit, which ignores market size and thereby discriminates against station owners who

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[12] Id. ¶ 89.

[13] See id. ¶¶ 83-91.

[14] See id. ¶ 96. Indeed, when the national ownership limits were adopted, the Commission included a sunset provision pursuant to which the limits would automatically expire after six years. On reconsideration, the Commission determined that such a sunset provision might lead to a dramatic and disruptive restructuring of the market and eliminated that provision. See Report and Order, Gen. Docket No. 83-1009, 100 FCC 2d 10 (1984).

[15] Id. ¶ 99.

serve smaller markets. Accordingly, Elcom supports the Commission's proposal to eliminate the numerical station limit.

Respectfully submitted,

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ATTACHMENT

CALL	CITY	Channel	Network
Elcom of Arizona, Inc.			
KOLD-TV	Tuscon, AZ	13	CBS
Elcom of Florida, Inc.			
WEVU(TV)	Naples, FL	26	ABC
Elcom of Georgia, Inc.			
WSAV-TV	Savannah, GA	3	NBC
Elcom of Hattiesburg, Inc.			
WHLT (TV)	Hattiesburg, MS	22	CBS
Elcom of Memphis, Inc.			
WMC-AM/FM/TV	Memphis, TN	5	NBC
Elcom of Mississippi, Inc.			
WJTV (TV)	Jackson, MS	12	CBS
Elcom of Ohio, Inc.			
WUPW-TV	Toledo, OH	36	FOX
Elcom of Reno License Corp.			
KAME-TV	Reno, NV	21	FOX
Elcom of South Carolina, Inc.			
WACH-TV	Columbia, SC	57	FOX
Elcom of South Dakota, Inc.			
KABY-TV	Aberdeen, SD	9	ABC
KPRY-TV	Pierre, SD	4	ABC
KSFY-TV	Sioux Falls, SD	13	ABC
Elcom of Tennessee, Inc.			
WTNZ(TV)	Knoxville, TN	43	FOX
Elcom of Wilmington, Inc.			
WECT (TV)	Wilmington, NC	6	NBC